

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES STORES,  
INC.,

Defendant.

Case No. 1:22-cv-00792-BAM

**ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO PROSECUTE**

**ORDER VACATING HEARING**

Plaintiff Fernando Gastelum (“Plaintiff”), proceeding *pro se*, filed the instant action on June 27, 2022. (Doc. 1.) Defendant Petco Animal Supplies Stores, Inc. (“Defendant”) filed a motion to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on September 12, 2022. (Doc. 5.) Plaintiff responded to Defendant’s motion by filing a first amended complaint on September 23, 2022. (Doc. 12.) On October 4, 2022, the Court denied Defendant’s motion to dismiss Plaintiff’s original complaint as moot based on the filing of the first amended complaint and indicated that Defendant may file a renewed motion to dismiss Plaintiff’s first amended complaint. (Doc. 14.)

On October 11, 2022, Defendant filed and served a motion to dismiss Plaintiff’s first amended complaint. (Doc. 15.) The motion is set for hearing before the undersigned on December 2, 2022. Pursuant to Local Rule 230(c), opposition, if any, to the granting of the motion must be filed and served no later than fourteen (14) days after the motion was filed. L.R.

230(c). Plaintiff's opposition or non-opposition to the motion was due no later than October 28, 2022 (14 days plus 3 days for mailing pursuant to Fed. R. Civ. P. 6(d)). The deadline for Plaintiff to respond to Defendant's motion to dismiss has expired, and Plaintiff has not otherwise been in contact with the Court. Plaintiff will be permitted one final opportunity to show cause why this action should not be dismissed with prejudice.

Plaintiff is advised that Local Rule 230(c) provides that no party will be entitled to be heard in opposition to motion at oral arguments if opposition to the motion had not been timely filed by that party. Further, the "failure to file a timely opposition may also be construed by the Court as a non-opposition to the motion." L.R. 230(c).

Accordingly, it is HEREBY ORDERED that Plaintiff shall show cause by WRITTEN RESPONSE **within twenty-one (21) days of service of this order** why this action should not be dismissed, with prejudice, for failure to prosecute this action. Plaintiff may comply with the Court's order by filing an opposition or statement of non-opposition to Defendant's October 11, 2022 motion to dismiss. Plaintiff is warned that if he fails to comply with the Court's order, this matter will be dismissed, with prejudice, for failure to prosecute.

In light of this order, the hearing on Defendant's motion to dismiss currently set for December 2, 2022, is vacated. The hearing will be reset by the Court if necessary following receipt of Plaintiff's response to this order, if any.

IT IS SO ORDERED.

Dated: November 14, 2022

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE